

11-690-3000-0029

Amend 5

FIFTH JOINT POWERS AGREEMENT
BETWEEN
NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT
AND
NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

RECEIVED

DFA

This Joint Powers Agreement (JPA) is entered into by and between the New Mexico Children, Youth and Families Department (CYFD) and the New Mexico Aging and Long-Term Services Department (ALTSD). OFFICE OF THE SECRETARY

I. Recitals

- A. CYFD and ALTSD are empowered to enter into cooperative agreements between themselves pursuant to the Joint Powers Agreement Act, NMSA 1978, Section 11-1-1 et seq.
- B. Pursuant to the Joint Powers Agreement Act, Section 11-1-1 et seq. NMSA 1978, CYFD and ALTSD are entering into this JPA. In 2005, the Adult Protective Services program was transferred from CYFD to ALTSD pursuant to the statutory mandate at Section 9-23-4 NMSA 1978.
- C. An initial JPA was entered on July 12, 2005 between CYFD and ALTSD, which set forth the terms of the transfer of the program. The 2005 JPA terminated on July 1, 2008. A second, third and fourth JPA were entered into on July 1, 2008, 2009 and 2010, respectively, to govern the continued cooperative relationship between ALTSD and CYFD regarding the transfer of adult protective services. The 2010 JPA terminated on June 30, 2013. This JPA will become effective upon signature and will govern the continued cooperative relationship between ALTSD and CYFD regarding the transfer of Adult Protective Services.
- D. ALTSD and CYFD are committed to the continued effective operations of Adult Protective Services. Accordingly, the two agencies will work together cooperatively to share resources as appropriate and to secure additional resources where needed.

II. Purpose of JPA

The purpose of this JPA is to set forth the continuing terms for cooperation between ALTSD and CYFD relating to the transfer of Adult Protective Services initiated in 2005; to identify the administrative, financial, programmatic and support responsibilities of ALTSD and CYFD for the term of this JPA, in accordance with existing federal and state statutes and regulations and other federal and state agreements and contracts, including other JPAs governing these responsibilities.

III. Term of JPA

The term of this JPA shall be in effect upon signature and will remain in effect until June 30, 2016. The term of this JPA shall remain in effect unless both parties agree to terminate this JPA and make alternative arrangements. The parties shall review the terms of this JPA annually. The parties may amend this JPA by agreement as necessary, pursuant to Article XII, with the approval of agency counsel, until the JPA is terminated. This JPA shall not be effective until approved in writing by the Department of Finance and Administration (DFA).

Independent lease agreements entered into by the parties pursuant to Paragraph IV (A) shall continue in effect subsequent to the termination date of this JPA, according to the terms of those

independent lease agreements. Upon termination of this JPA, the parties may enter into a separate joint powers agreement, if and as necessary to govern operations in shared space which are continuing at that time.

IV. Responsibilities of the Parties

- A. Office Space and Leases:** Adult Protective Services offices are co-located with CYFD in most counties throughout the State of New Mexico. All Adult Protective Services offices are located in leased space. The parties will continue their responsibilities and sharing of leased office space as set forth under the terms of the JPA.

ALTSD and CYFD are co-located as noted below:

Location	Landlord
Alamogordo	Sunfair Corporation
Artesia	Stegman, LLC
Carlsbad	Tom Mathis
Clovis	Draco, LLC
Deming	Timothy & Margaret Seybert
Espanola	Ashtan, LLC
Estancia	Rafael Gutierrez
Farmington	Vine, LLC
Gallup	Branco, LLC
Las Cruces	Investments West
Las Vegas	Sarajo, LLC
Los Lunas	Cottonwood Tree, LLC
Portales	Tom Mathis
Raton	Investment West
Roswell	Don Elwell
Santa Fe	Samarian Style, LLC
Socorro	Holm Bursum III
Taos	Alexandria Concha, LLC

ALTSD and CYFD will enter into and/or maintain a lease agreement with each landlord for the useable square feet occupied by each of the departments. The lease agreements will also include leasable square feet based on a ratio of ALTSD's and CYFD's useable square feet to total useable square feet in the building. Leasable square feet cover shared spaces such as hallways, reception areas, break rooms, telephone and equipment rooms, janitor closets and bathrooms. As the lease agreements expire and regarding future changes in leased office space, ALTSD and CYFD agree to process their own lease agreements.

B. Allocation of Shared Operating Expenses.

Shared operating expenses include equipment such as leased copiers and telecommunications systems used by both CYFD and ALTSD staff. CYFD and ALTSD have identified offices where shared operating expenses are practical in order to avoid unnecessary duplicative equipment. During the term of the JPA, CYFD will continue to provide these services in those offices. Both Departments will work toward a fair and reasonable allocation of these expenses in preparation for possible future amendments to this agreement.

C. IT Applications and Support

For the duration of this JPA, regarding matters related to the IT system, applications and IT support, CYFD and ALTSD agree to the terms as set forth in the Memorandum of Understanding prepared by CYFD and ALTSD IT staff which is attached as Exhibit 1.

D. Payment

Adult Protective Services receives federal funds under Title XX. CYFD and ALTSD have agreed that CYFD shall remain the direct recipient of the grant of awards for the Title XX Social Services Block Grant. ALTSD will receive an allocation of 22.54% of the final allocation of SSBG during the term of this agreement.

ALTSD agrees to invoice CYFD quarterly for SSBG expenditures incurred by ALTSD. CYFD shall transfer the allocation of Title XX funding to ALTSD.

ALTSD agrees that, for so long as federal funding for adult protective services derives from federal grants obtained by CYFD, CYFD and/or the responsible federal agencies shall have the right to audit ALTSD for compliance with the terms of applicable federal grants requirements. ALTSD shall participate in the preparation of federal grant applications. ALTSD will collaborate with CYFD and CYFD will submit applications to the Department of Health and Human Services for approval.

E. Other Matters

For as long as this JPA remains in effect, CYFD and ALTSD agree to maintain regular communications regarding the status and efficiency of shared operations.

V. Administering Agency

Pursuant to 2004 N.M. Laws, ch. 23 § 13(B)(3), the function of Adult Protective Services has been transferred to ALTSD. ALTSD has assumed all authority and responsibility as the state agency providing adult protective services, except as modified by statutory or regulatory changes or amendments or federal and state JPAs, including other agreements or contracts. CYFD has authority and responsibility as set forth in this JPA, except as modified by statutory or regulatory changes or amendments of federal and state JPAs, other agreements or contracts.

VI. Property

Upon termination of this JPA, the parties retain their own property except as specified in this JPA. Property acquired by the parties to fulfill the terms of this JPA shall remain in the possession of, and shall remain the property of the party acquiring the property, subject to unamended requirements of federal statutes, regulations, agreements or contracts.

VII. Accounting: Return of Funds

CYFD and ALTSD agree to adhere to generally accepted accounting principles and be strictly accountable for all receipts and disbursements made pursuant to this JPA. An aggrieved party will have the right to recover all amounts which are found to have been disbursed or expended in violation of generally accepted accounting principles or applicable state or federal statutes or regulations.

VIII. Funds Accountability

CYFD and ALTSD shall maintain financial records as required by applicable federal and state laws and regulations, follow generally accepted accounting principles and account for all receipts and disbursement of funds transferred between or within the parties, pursuant to this JPA. Further, CYFD and ALTSD shall permit authorized representatives of the United States Center for Medicare and Medicaid, the State Auditor, the New Mexico Attorney General, the New Mexico Department of Finance and Administration, CYFD and ALTSD to inspect and audit all data and records relating to adult protective services programs and/or operations for a period of six years after submission of the final federal program and financial reports to the United States Centers for Medicare and Medicaid for any given federal financial year. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this JPA. Each party shall be solely responsible for financial or other sanctions, penalties or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this JPA. Each party shall be liable for its acts or failure to act in accordance with this JPA, subject to the immunities and limitations of the New Mexico Tort Claims Act.

IX. Confidentiality

- A. ALTSD and CYFD each warrant that they shall take all necessary steps to ensure that their employees comply with all confidentiality and privacy requirements of state and federal statutes and regulations, including but not limited to Health Insurance Portability and Accountability Act (HIPAA) as applicable, and shall not use nor disclose confidential information as defined in state or federal statutes, regulations or otherwise in policy, codes of ethics or conduct, regarding clients of or applicants for adult protective services and its programs, whether Medicaid funded or not, except as necessary for the proper discharge of program obligations under this JPA or as otherwise authorized herein. Each party recognizes that irreparable harm can be caused to the other party, and its clients and applicants, by disclosure of confidential information as defined above, and accordingly either party may refuse or enjoin its disclosure, CYFD will be solely responsible for any violations by CYFD or its agents. ALTSD will be solely responsible for any violations by ALTSD or its agents. Any liability incurred in connection with this agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.
- B. Either party shall notify the other party promptly of any unauthorized possession, use, knowledge or attempt thereof, of confidential information. Either party shall promptly furnish the other party full details of the unauthorized possession, use of knowledge or attempt thereof, and assist in investigating or preventing the recurrence thereof.
- C. This confidentiality agreement shall be binding on the parties and their agents.

X. Liability

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this JPA. Each party shall be solely responsible for financial or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this JPA. Each party shall be liable for its acts or failure to act in accordance with this JPA, subject to the immunities and limitations of the New Mexico Tort Claims Act.

XII. Amendments

Any and all amendments shall be made in writing and shall be agreed to and executed by the respective Department Secretaries and the Department of Finance and Administration, after approval by Department counsel, before becoming effective.

XIII. Termination of JPA

This JPA may not be terminated unilaterally by either of the parties, because the transfer of Adult Protective Services to ALTSD is a statutory mandate. Either party may request negotiations to terminate the JPA, and to make other arrangements for ongoing protective services operations. Termination of this JPA shall not alter performance obligations incurred by either party prior to termination, unless specifically agreed upon by the parties as a condition of termination.

XIV. Entire Agreement

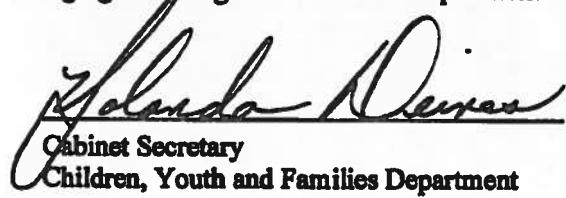
This JPA incorporates the entire understanding between the parties and all prior negotiations and discussions whether verbal or written have been merged herein or waived. No other representations shall be binding upon the parties unless or until incorporated by amendment.

In witness whereof:



Cabinet Secretary
Aging and Long-Term Services Department

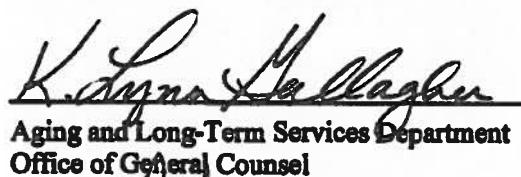
5/16/13
Date



Cabinet Secretary
Children, Youth and Families Department

5/16/13
Date

Approved as to form and legal sufficiency:



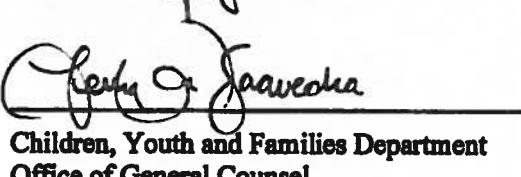
Aging and Long-Term Services Department
Office of General Counsel

5/17/13
Date



Aging and Long-Term Services Department
Chief Financial Officer

5/16/13
Date



Children, Youth and Families Department
Office of General Counsel

5/16/13
Date

Pauline Treuer
Children, Youth and Families Department
Chief Financial Officer

5-15-13

Date

APPROVED:

Anna Clifford

Cabinet Secretary
Department of Finance and Administration

5/22/13

Date

AN

**MEMORANDUM OF UNDERSTANDING
BETWEEN
Children, Youth and Families Department
AND
Aging and Long-Term Services Department**

This MEMORANDUM OF UNDERSTANDING (MOU) related to Information Technology (IT) Services is hereby made and entered into by and between the Children, Youth and Families Department hereinafter referred to as CYFD, and Aging and Long-Term Services Department hereinafter referred to as ALTSD.

A. PURPOSE:

The purpose of this MOU is to substantiate an understanding between CYFD and ALTSD as it relates to providing Wide Area Network (WAN) and Local Area Network (LAN) support as more specifically set forth below.

As each physical site is moved to the ALTSD network, CYFD will no longer support IT issues for ALTSD users located at that site. The ALTSD office moves are dependent on the Department of Information Technology (DoIT) to provide WAN connectivity.

B. Affected Locations:

At the time of writing, the scope of this MOU is limited to ALTSD users who are located in the following offices where CYFD and ALTSD personnel are co-located.

1. Carlsbad
2. Estancia
3. Hobbs
4. Los Lunas
5. Raton
6. Silver City

C. CYFD SHALL:

Provide for the following IT equipment, services or information as required for this initiative:

1. Provide WAN/LAN to each location for ALTSD until each location is on ALTSD's own WAN/LAN environment.
2. Support Novell accounts for ALTSD.
3. Provide Technical Support Monday through Friday from 8:00 AM to 5:00 PM, except on State holidays, using CYFD's Help Desk Incident/Service/Change Requests management system. Using IR's/CR's through the CYFD Help Desk.
4. Support ALTSD IT staff during migrations of ALTSD personnel from CYFD's infrastructure to ALTSD infrastructure. This includes, but is not limited to, supporting access to user's home folders and network drives.

• **ALTSD SHALL:**

Provide for and/or pay for the following IT equipment, service or information as required for this initiative:

1. Create and support own WAN/LAN and IT equipment.
2. Notify CYFD upon successful completion, as each location is moved to ALTSD WAN/LAN environment.
3. Provide all IT support for ALTSD personnel with the exception of the Novell accounts and associated network drives and services. Additionally, the WAN/LAN network shall remain CYFD's responsibility. These exceptions shall be automatically terminated once ALTSD has established its own independent network.

D. SERVICE PROCESS

The CYFD Help Desk will be the central-point-of-contact for all support issues. Contact can be made by calling 505-841-6499 or emailing cyfd.helpdesk@state.nm.us.

E. DURATION:

Network Connectivity will be negotiated as specified in Section B. This understanding will operate from the date of signing until termination of the Joint Powers Agreement between ALTSD and CYFD and may be subjected to revision or modification by mutual agreement.

F. PRINCIPAL CONTACTS:

ALTSD

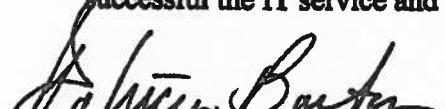
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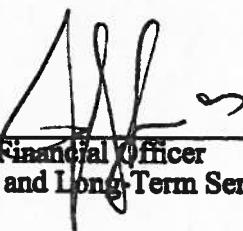
G. SUPPORT OF AGREEMENT:

It is understood both parties shall support and promote the spirit of this agreement to make successful the IT service and support provided to the greatest extent possible.



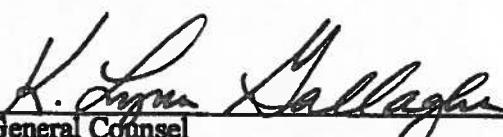
Chief Information Officer
Aging and Long-Term Services Department

5/17/2013
Date



Chief Financial Officer
Aging and Long-Term Services Department

5/16/13
Date



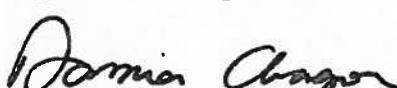
General Counsel
Aging and Long-Term Services Department

5.17.13
Date



Cabinet Secretary
Aging and Long-Term Services Department

5/16/13
Date



Chief Information Officer, IT Services
Children, Youth and Families Department

S-16-13
Date



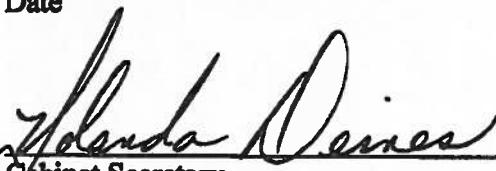
Chief Financial Officer
Children, Youth and Families Department

5-15-13
Date



General Counsel
Children, Youth and Families Department

5/16/13
Date



Cabinet Secretary
Children, Youth and Families Department

5/16/13
Date